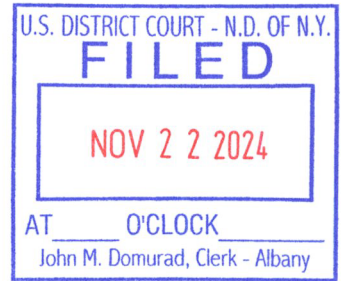


## UNITED STATES DISTRICT COURT

for the

Northern District of New York

1st Civil Filing Division



Daniel Gerken, Beneficiary

Case No. 1:24-cv-1423 (AMN/MJK)

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Capital One Financial Corp

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

## COMPLAINT FOR A CIVIL CASE

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Daniel Gerken
Street Address	c/o 4 Winter Haven
City and County	West Sand Lake Rensselaer County
State and Zip Code	New York {12196}
Telephone Number	518 610-1832
E-mail Address	gerkendan44@gmail.com

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

## Defendant No. 1

Name	Capital One Financial Corp
Job or Title <i>(if known)</i>	
Street Address	1680 Capital One Drive
City and County	Mclean
State and Zip Code	VA 22102-3491
Telephone Number	1800 227-4825
E-mail Address <i>(if known)</i>	

## Defendant No. 2

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

## Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

## Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

**II. Basis for Jurisdiction**

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

**A. If the Basis for Jurisdiction Is a Federal Question**

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

UCC 3-603; UCC 3-311; UCC 3-306; UCC 3-104, 15 USC 1615, 18 USC 8

**B. If the Basis for Jurisdiction Is Diversity of Citizenship**

## 1. The Plaintiff(s)

## a. If the plaintiff is an individual

The plaintiff, *(name)* Daniel Gerken, is a citizen of the State of *(name)* New York.

## b. If the plaintiff is a corporation

The plaintiff, *(name)*, is incorporated under the laws of the State of *(name)*, and has its principal place of business in the State of *(name)*.

*(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)*

## 2. The Defendant(s)

## a. If the defendant is an individual

The defendant, *(name)*, is a citizen of the State of *(name)*. Or is a citizen of *(foreign nation)*.



b. If the defendant is a corporation

The defendant, *(name)* Capital One Financial Corp, is incorporated under the laws of the State of *(name)* Virginia, and has its principal place of business in the State of *(name)* Virginia. Or is incorporated under the laws of *(foreign nation)* and has its principal place of business in *(name)*.

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)*

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

Capital One Financial has unjustly enriched themselves on payments with interest by using Plaintiff's Credit application as a securitized Promissory Note for the duration of the relationship between Plaintiff and Defendant as well as accepted but not honored the many negotiable instruments sent to Defendant by Plaintiff for discharge of the balance in the account. These damages have amounted to thousands of dollars in payments and interest over many years.

### III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Plaintiff has sent in numerous negotiable instruments to Defendant that have been accepted but not honored. The Defendant has also not sent any of these negotiable instruments back to Plaintiff because they were accepted as Defendant was a holder in due course. As recently as October 29, 2024 an endorsed negotiable instrument was sent to Defendant and was accepted but not honored and Defendant continues to charge interest and demand payments monthly based on the positive account balance.

### IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Plaintiff is requesting this honorable court award \$100,000.00 from Defendant in both actual and punitive damages for the many negotiable instruments and endorsed coupons that Plaintiff submitted to Defendant to satisfy the credit account debts. These wrongs currently continue because on November 18, 2024 Defendant notified Plaintiff that negotiable instruments were not accepted and only Federal Reserve Notes would be accepted for satisfaction of debt. This fraud and blatant disregard for the Bills of Exchange Act along with disregard for Federal Law governing the use of negotiable instruments is the basis for punitive damages sought by Plaintiff in this matter.

Other damages include the interest generated on the account that was not furnished to the Plaintiff but made as an obligation of federal reserve notes to the Plaintiff.

## V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

### A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11-21-2024

Signature of Plaintiff

Printed Name of Plaintiff

Daniel Gerken

### B. For Attorneys

Date of signing: \_\_\_\_\_

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address